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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of

Amendment of Part 20 and 24 of the  
Commission's Rules -- Broadband  
PCS Competitive Bidding and the  
Commercial Mobile Radio Service  
Spectrum Cap

WT Docket No. 96-59

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Amendment of the Commission's  
Cellular PCS Cross-Ownership

GN Docket No. 90-314

**COMMENTS OF  
GENERAL WIRELESS, INC.**

General Wireless, Inc. ("GWI"), by its attorneys, submits these comments in response to the Federal Communications Commission's ("Commission") Notice of Proposed Rule Making ("NPRM") in the above-captioned proceeding.

**STATEMENT OF INTEREST**

GWI is a corporation founded by entrepreneurs with substantial experience in the wireless telecommunications industry. GWI's wholly owned subsidiary, GWI PCS, Inc., is currently participating in the PCS block C 30 MHz

Basic Trading Area auction ("C block auction") as a "Small Business."<sup>1</sup> Accordingly, GWI has an interest in the outcome of this proceeding.

## COMMENTS

### I. The Commission Should Neither Extend Small Business Preferences to PCS Blocks D and E Nor Auction Blocks D, E and F Simultaneously

In the NPRM, the Commission requests comment regarding, among other things, whether it should (1) extend Small Business preferences to PCS blocks D and E and, (2) auction PCS blocks D, E and F together in a single auction (thereby permitting bidders to aggregate up to 30 MHz of PCS spectrum in a single market in such an auction).<sup>2</sup> GWI is strongly opposed to each of these proposals.

With respect to the proposal to extend preferences to blocks D and E, GWI formed itself in June 1994 in reliance on the Commission's final Entrepreneurs' Blocks rules adopted in PP Docket No. 93-253. The Commission's original PCS auction scheme involved an "Entrepreneurs' Auction" of PCS blocks C and F in which eligibility would be limited to bidders meeting certain financial criteria. The FCC planned to auction blocks A and B first, followed by block C and

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<sup>1</sup> See 47 C.F.R. § 24.720(1) and (2)

<sup>2</sup> NPRM at paras. 53-55, 83-86.

F and finally blocks D and E.<sup>3</sup> Subsequently, the Commission decided to auction blocks C and F separately.<sup>4</sup> Based on the Commission's plan, GWI expended extensive time and money developing its financial models and business plan. The subject NPRM's proposal to auction blocks D, E and F together and to extend Small Business preferences to blocks D and E would significantly harm GWI and other C block participants.

Specifically, GWI based its valuation of C block auction licenses, in part, on the final prices garnered at the A and B block auction with a "premium" reflecting (1) the value of the auction preferences, (2) the limitation of preferences to the eligible C and F block applicants, and (3) the fact that the Commission declared the C block auction as the only auction of 30 MHz BTA PCS licenses (and the only available 30 MHz block of licenses to which auction preferences would apply). Indeed, GWI has continued to participate in the C block auction despite the unexpectedly high bid prices because it has had a reasonable basis to believe that the C block would be its only opportunity to rely on Small Business preferences to acquire 30 MHz BTA PCS licenses.

Due to the high bid prices for the C block licenses, all of the C block applicants will begin operations saddled with a substantial amount of government

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<sup>3</sup> Fifth Report and Order, 9 FCC Rcd 5532, 5536 (1994).

<sup>4</sup> News Release, FCC Announces Date For First Entrepreneurs' Block Auction, (December 23, 1994) ("1994 News Release").

debt (albeit financed under favorable government terms). Making the installment payments on the licenses, however, is merely one of several financial burdens faced by the C block applicants. Applicants must also finance the construction and initial operation of their systems. Due to the radio propagation characteristics of the 2 GHz PCS spectrum, PCS licensees must build more cells than cellular licensees have built at 800 MHz to offer competitive coverage throughout like service areas. In addition, GWI, like most PCS applicants and licensees, plans to incur the expense of introducing state-of-the-art digital facilities into the wireless marketplace to help differentiate their PCS service from existing cellular service providers. Accordingly, in order to construct and operate their systems, GWI and other PCS licensees must raise capital and obtain financing for significant expenses beyond the cost of the license bid prices.

Assuming the proposal to extend preferences would be adopted shortly after the close of the C block auction, the Commission's proposed changes could decrease the value of the C block licenses at the critical time that the C block applicants attempt to seek necessary working capital. Specifically, the Commission's proposal would enable financially qualifying bidders that did not acquire spectrum in the C block to acquire up to 30 MHz (rather than 10 MHz) of PCS spectrum in a market with auction preferences. As a result, the valuation placed on the C block licenses would be undermined because each market is more

likely to have four 30 MHz PCS licenses rather than three and, more importantly, a second 30 MHz BTA block with auction preferences. For instance, had GWI known that there was a second opportunity to accumulate 30 MHz of BTA licenses pursuant to auction preferences, it, like the other C block bidders, may also have withdrawn from the C block to bid in the D/E/F block auction. In addition, the financial markets could have a reduced incentive to invest in C block winners when investors have the option of investing in a D/E/F Small Business licensee that may acquire 30 MHz in a BTA at a collectively lower bid price. In this manner, the Commission's proposal would unfairly change the PCS auction rules late in the process and thereby undermine the C block entrepreneurs it sought to encourage when it first adopted the PCS auction rules.<sup>5</sup>

In addition, the Commission's proposal to auction blocks D, E and F concurrently would also significantly harm C block applicants, particularly if this rule change were adopted together with the proposal to extend preferences to the D and E blocks. Adopting both rule proposals would effectively create a second 30

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<sup>5</sup> The NPRM cites to the 1994 News Release to support its statement that it previously "sought comment" on whether to auction blocks D, E and F simultaneously. NPRM at para. 84, n. 159. This "news release" did not constitute adequate notice for purposes of the Administrative Procedures Act ("APA"), and therefore its release does not mitigate against the unfairness of the Commission's proposed "eleventh hour" changes to the Entrepreneurs' Blocks. In any event, that the Commission failed to adopt any such rules prior to the commencement of the C block auction and saw fit to propose them anew in the NPRM confirms that C block bidders could not have anticipated such a severe policy shift.

MHz entrepreneurs' BTA auction composed of three constituent 10 MHz blocks. This would transform the financial markets view of the D, E and F blocks from "niche" or "fill-in" spectrum to independently valuable spectrum with which to compete with the A, B and C blocks and cellular licensees. If these proposals were adopted, then, as discussed above, potential C block investors and lenders would have a reduced incentive to invest in the C block winners just as the C block winners seek to finance their system construction and operation. The C block applicants' access to capital would thereby be reduced, despite the Commission's extensive two-year effort to ensure the economic opportunity of small businesses by improving such access to capital. As a result, the risk of default may increase for many C block participants. Accordingly, GWI strongly opposes the Commission's proposal to auction blocks D, E and F concurrently, particularly if the Commission proposes to extend Small Business preferences to blocks D and E.

## II. The FCC Should Eliminate the Three-Year Transfer of Control Restriction for Both the C and the F Block Licenses

In the NPRM, the Commission proposes that if it eliminates race- and gender-conscious preferences and extends Small Business preferences to the D and E blocks, then it would allow all F block licensees eligible for preferences to transfer control of F block licenses to any entity qualified as an Entrepreneur at any time.

Under this proposal, however, such transfers would still be subject to the existing unjust enrichment penalties. The NPRM states that the proposed rule modification is necessary because the current rule "goes farther than to merely discourage speculative bidding in the entrepreneurs' block auction."<sup>6</sup>

GWl agrees with the Commission that the current rule goes farther than necessary, particularly when the Commission's unjust enrichment rules remain in place to discourage speculative bidding. In addition, GWl recommends that the Commission broaden its proposal to apply also to C block licensees even if the Commission does not extend preferences to the D and E blocks. Any rule change of a broad nature such as the transfer of control restriction should apply to both the C and the F blocks because the underlying policies for each of these Entrepreneurs' Blocks are designed to serve the same statutory objective of ensuring the economic opportunity of small businesses.<sup>7</sup> Indeed, the NPRM proffers no legal or policy reason to limit the applicability of the proposed rule change to the F block, particularly since the rule change, as proposed, would apply to a combined 30 MHz license

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<sup>6</sup> NPRM at para. 62.

<sup>7</sup> 47 U.S.C. § 309(j)(3)(D). With this principle in mind, GWl also supports the Commission's proposals to streamline the ownership disclosure obligations and recommends that the Commission adopt such changes for both the C and F block auctions. NPRM at paras. 75-83. Of course, in order for any such changes to be helpful to C block applicants, the Commission must adopt such proposed changes quickly or extend the due date for filing the long form applications (FCC Form 600) should the C block auction end before such rules can be implemented.

block.<sup>8</sup> In addition, there is no reason to condition the adoption of this rule modification on the extension of preferences to blocks D and E. Accordingly, the Commission should not adopt its proposal for blocks C and F even if it does not extend Small Business preferences to the D and E blocks.

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<sup>8</sup> If the Commission were to eliminate the transfer restriction for the F block and not the C block, then the Commission's action may be found to be arbitrary and capricious upon review by the courts. See, e.g., Cincinnati Bell v. FCC, No. 94-3701, Stay entered October 18, 1995 (6th Cir.), App. to Vacate Stay granted, FCC v. Radiofone, Inc., 116 S. Ct. 283 (1995, Stevens, J., in chambers), mot. to vac. den., 116 S. Ct. 373 (1995) (Mem.).

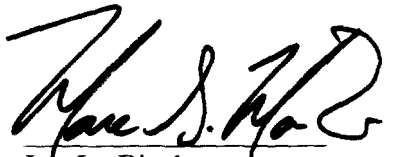


## CONCLUSION

To ensure the economic opportunity of applicants for the Entrepreneurs' Blocks, GWI urges the Commission to reject its proposal to extend Small Business preferences to the D and E blocks as well as its proposal to auction PCS blocks D, E and F simultaneously. In addition, GWI supports the Commission's proposal to eliminate the three-year holding period as modified herein.

Respectfully submitted by:

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